

DATE: 2024-07-02
MEETING: REGULAR COUNCIL
DEPARTMENT: CITY SOLICITOR
**REPORT AUTHOR: REX OSIVWEMU,
SOLICITOR**
COUNCIL CODE OF CONDUCT BYLAW – FOLLOW-UP REPORT
EXECUTIVE SUMMARY:

The *Municipal Government Act* (“**MGA**”) requires every council to establish a code of conduct (“**Code**”) bylaw and that the bylaw be reviewed every four years.

This report examines the independent Integrity Commissioner role model/regimes across Canada as it pertains to initial screening and investigation of Code violation complaints (“**Enforcement Procedures**”).

A jurisdictional scan of Code regimes, with emphasis on the role of an Integrity Commissioner, from across Canada has been conducted. Based on this, staff put forward the following review.

STRATEGIC ALIGNMENT:

INNOVATION <input type="checkbox"/>	ECONOMIC EVOLUTION <input type="checkbox"/>	SERVICE ORIENTATION <input checked="" type="checkbox"/>
PARTNERSHIPS & GOVERNANCE <input checked="" type="checkbox"/>	COMMUNITY WELLNESS <input type="checkbox"/>	RESILIENCY & SUSTAINABILITY <input checked="" type="checkbox"/>

RECOMMENDATION:

It is recommended through the Administrative Committee and the Administrative and Legislative Review Committee that Council

- (a) directs staff to make the following amendments to the proposed Council Code of Conduct Bylaw No. 4805 for Council’s consideration:
 - elimination of ALR Committee as an initial assessment body for council code of conduct complaints;
 - establish a complaint system that would see all complaints directed to an external Integrity Commissioner for initial assessment and investigation;
 - establish a process comparable to the Red Deer model that would allow individual council members to contact the Integrity Commissioner for advice and direction on any matter related to the Code Bylaw;
 - add requirements for complainants comparable to the Red Deer model as follows:
 - a complainant must either reside in Medicine Hat, own land in Medicine Hat, own a business in Medicine Hat or work in Medicine Hat;
 - change the coming into force date of the new bylaw to March 1, 2025 to allow time for implementation of the Integrity Commissioner model, including without limitation the selection of an Integrity Commissioner by Council.
- (b) confirm the deadline of 90 days for completion of investigations, subject to an ability to extend that deadline if the Integrity Commissioner determines that it is not practically possible to complete the investigation within that time period;

PREVIOUS COUNCIL MOTIONS / DIRECTIONS:

On April 8, 2024, Council passed the following resolution:

“Council refers the draft Code of Conduct Bylaw 4805 to the Outstanding Items List of the Administrative and Legislative Review Committee to allow Administration to complete a jurisdictional scan and review related to:

- *the option of establishing an Integrity Commissioner position, including potential costs;*
- *the feasibility of the 90-day complaint investigation window; and*
- *the functionality of public complaints;*

and that the review be completed by the end of Q2.”

In accordance with the motion passed by Council, staff conducted its review.

BACKGROUND / ANALYSIS:

In reviewing best practices, staff reviewed Code of Conduct regimes in other large municipalities in Canada. Six provinces impose a requirement for municipalities to adopt codes of conduct for elected officials:

Alberta, Saskatchewan, Manitoba, Ontario, Quebec, and Prince Edward Island.

Staff reviewed Code of Conduct regimes in these six provinces.

While Codes were reviewed from across Canada, the scan largely focused on 11 comparator Code regimes from municipalities within these six provinces, namely: Calgary, Edmonton, Red Deer, Wood Buffalo, Saskatoon, Winnipeg, Toronto, Ottawa, Brampton, Montreal, and Charlottetown.

While Code content sets out the rules and shared standards of conduct expected of members of council, enforcement procedures set out the processes through which a Code will be administered and enforced. Both are important components of an effective Code regime.

Enforcement Procedures:

Among the six provinces that impose the requirement for municipalities to adopt a Code, there is a variance related to imposing mandatory procedures for enforcement. The legislation is prescriptive in some provinces, but others have no requirement that municipalities adopt enforcement procedures. Despite this, each municipality examined has adopted an enforcement procedure, with some being included in the Code bylaw and others in a separate bylaw or policy. Codifying an enforcement procedure provides the benefit of transparency and predictability in the process of Code enforcement, which in turn contributes to procedural fairness.

Several Code models were examined in the scan, with each originating in provinces that have chosen to legislate specific enforcement procedures. The main distinction between these models is centered around who is mandated with administering Code enforcement. However, a common thread running through each is the emphasis placed on having an independent third-party conduct the investigation of Code complaints.

Each model is examined in **Attachment 1** for greater detail on the results of the scan as it relates to enforcement procedures.

(a) Integrity Commissioner Model:

The scan indicates a trend among medium to large Canadian municipalities towards adopting the Integrity Commissioner Model of Code enforcement.

An Integrity Commissioner is a neutral independent third-party selected by a council to administer a municipality’s Code regime for elected officials. Generally, an Integrity Commissioner has 3 core functions:

- **Investigative** – Receives and screens Code complaints, undertakes complaint investigations, reports findings to council, and makes recommendations on corrective action(s);
- **Advisory** – Provides council members with confidential written and oral advice on questions and situations related to the codes of conduct and other policies or statutes governing ethical behavior of elected members; and
- **Education** – Delivers training and educational programs to members of council and staff.

The advantage of an Integrity Commissioner model is that it improves public perception in terms of fairness, non-bias and impartiality.

The Integrity Commissioner Model originated in Ontario, where the position was first implemented at the municipal level in 2007 and is now mandatory for all municipalities in the Province. While not mandatory outside of Ontario, of the municipalities examined, Calgary, Edmonton, Red Deer, Wood Buffalo, Saskatoon, and Winnipeg have each voluntarily elected to appoint Integrity Commissioners.

Notable Alberta municipalities which have not adopted this model include, Lethbridge, St. Albert, Airdrie, Strathcona County, Grande Prairie, Chestermere, Cold Lake, County of Newell, Canmore, Okotoks, Cochrane.

Table 1 below outlines the procedures for handling Code complaints under the Ontario Integrity Commissioner Model. This enforcement procedure is relatively consistent for all municipalities that have adopted Integrity Commissioners.

Overview of Complaint Procedures in Ontario Municipalities
Informal and Formal Complaint Process
<ul style="list-style-type: none"> • Provides for both an informal resolution process (mediation, etc.), as well as a formal process; both are overseen by the Integrity Commissioner. • Complainants are encouraged to attempt informal resolution prior to submitting a formal complaint.
Filing a Formal Complaint
<ul style="list-style-type: none"> • Formal complaints are filed either directly with the Integrity Commissioner or with the Clerk’s Office (which are then forwarded to the Integrity Commissioner). • Complaints must be submitted in a prescribed form by an identifiable individual with a supporting affidavit. The specific provision(s) allegedly violated must be clearly cited, and supporting evidence attached to the affidavit. • Among the municipalities examined, the limitations period for filing complaints varies from having none at all to up to 6 months following the date of the incident giving rise to the complaint, or alternatively the date that it was “discoverable”.
Initial Screening
<ul style="list-style-type: none"> • The Integrity Commissioner undertakes initial screening of complaints, reviewing to ensure that the complaint: <ul style="list-style-type: none"> - Is complete and meets the formal requirements in terms of format and information provided;

- Is not frivolous, vexatious, or not brought in good faith;
- Is not filed within an election blackout period running up to a municipal election.
- Is, on its face, a complaint with respect to non-compliance with the Code . will be referred back to the complainant or elsewhere where the subject matter of the complaint:
 - Is of a criminal nature/falls under the Criminal Code;
 - Falls under municipal conflict of interest legislation;
 - Falls under municipal freedom of information legislation;
 - Falls under another municipal policy (e.g. complaint is about municipal staff);
 - Is already pending under other processes, such as a human rights complaint, or a grievance under a collective agreement;
 - Is otherwise outside the jurisdiction of the Integrity Commissioner.
- The Integrity Commissioner retains the authority to dismiss complaints or decline to undertake a formal investigation.

Investigation and Report to Council

- If a complaint passes initial screening, the Integrity Commissioner will undertake a confidential investigation, during which the subject of the complaint is entitled to natural justice and procedural fairness.
 - The subject member must be provided with notice of the investigation.
 - The subject member is entitled to know the identity of the complainant and is provided with the supporting materials and particulars of the complaint against them.
 - Both the subject member and the complainant are invited to make written submissions and responses to the Integrity Commissioner.
 - The subject member must be provided notice of any recommendation by the Integrity Commissioner to council and is entitled to an opportunity to comment on the findings and recommendations.
 - Codes typically prescribe set timelines between the date that the complaint is received and the date that the Integrity Commissioner's report must be filed and provided to the parties.
 - The Integrity Commissioner conducting the investigation is an independent third-party, reducing any apprehension of bias in the process.
- The Integrity Commissioner is generally given broad powers to examine documents in the course of their investigation.
- Codes contain provisions against obstructions of an investigation, and/or reprisals against participants. A failure to observe these provisions is itself a breach of the Code.

Report to Council

- If the Integrity Commissioner finds that there has been no Code breach, then typically there is no report to council, and the identity of the subject member is not released to the public. However, there is some variation between the Codes on this point.

- Should the Integrity Commissioner determine that there has been a Code breach, they will submit a report to council containing their findings and their recommendation on sanctions.
- The report is forwarded to the Clerk to be placed on the next regular council meeting agenda:
 - Integrity Commissioners are also typically required to provide council with an annual report, outlining their activities, and the number of complaints received during the period under review.

Council Decision

- Council generally receives the report during public session.
- All reports from the Integrity Commissioner to council are released to the public and are typically made available when they come before council.
 - Although council is required to respond to the report's recommendation in public session, they are usually permitted to discuss in closed session if there is a request to do so.
- While the subject member is generally provided the opportunity to respond to the allegations before a final decision, they are not permitted to participate in the review of the complaint or in the decision.
- Council may accept or vary the Integrity Commissioner's recommendation on sanctions.
- Some of the codes examined allow for the subject member to claim legal costs, subject to council's approval.

Table 2 below outlines the procedures for handling Code complaints under the Red Deer Integrity Commissioner Model. The Red Deer model is presented in detail in this report because it is the most recent in the Province of Alberta and because Red Deer is a comparable mid-sized municipality.

Overview of Complaint Procedure in Red Deer Alberta
Informal and Formal Complaint Process
<ul style="list-style-type: none"> • Provides for both an informal resolution process (mediation, etc.), as well as a formal process; both are overseen by the Integrity Commissioner. • A complainant must have a connection to Red Deer. A complainant must be either a member of council, a staff member or must either reside in Red Deer, own land in Red Deer, own a business in Red Deer or work in Red Deer. • Complainants are encouraged to attempt informal resolution prior to submitting a formal complaint.
Filing a Formal Complaint
<ul style="list-style-type: none"> • All formal complaints are received and handled by the Integrity Commissioner, thus removing the Mayor from the intake process. • Complaints must be submitted in a prescribed form by an identifiable individual. The specific provision(s) allegedly violated must be clearly cited, including any witnesses and the dates of events.

- The limitation period for filing complaints is 90 days following the date of the incident giving rise to the complaint, or alternatively the date that it was “discoverable”.

Initial Assessment

- The Integrity Commissioner undertakes initial assessment of complaints, reviewing to ensure that the complaint:
 - Is complete and meets the formal requirements in terms of format and information provided;
 - Is not frivolous, vexatious, or not brought in good faith;
 - Is not filed within an election blackout period running up to a municipal election.
- Is, on its face, a complaint with respect to non-compliance with the Code. Complaints will be referred back to the complainant or elsewhere where the subject matter of the complaint:
 - Is of a criminal nature/falls under the Criminal Code;
 - Falls under municipal conflict of interest legislation;
 - Falls under municipal freedom of information legislation;
 - Falls under another municipal policy (e.g. complaint is about municipal staff);
 - Is already pending under other processes, such as a human rights complaint, or a grievance under a collective agreement;
 - Is otherwise outside the jurisdiction of the Integrity Commissioner.
- The Integrity Commissioner retains the authority to dismiss complaints or decline to undertake a formal investigation.
- Timelines have been added to ensure complaints are managed in a timely and fair manner. The Integrity Commissioner has discretion to expand timelines where necessary.

Investigation and Report to Council

- If a complaint passes initial screening, the Integrity Commissioner will undertake a confidential investigation, during which the subject of the complaint is entitled to natural justice and procedural fairness.
 - The subject member/complainant/council must be provided with notice of the investigation.
 - The subject member is entitled to know the identity of the complainant and is provided with the supporting materials and particulars of the complaint against them.
 - Both the subject member and the complainant are invited to make written submissions and responses to the Integrity Commissioner.
 - The subject member must be provided notice of any recommendation by the Integrity Commissioner to council and is entitled to an opportunity to comment on the findings and recommendations.
 - The Integrity Commissioner conducting the investigation is an independent third-party, reducing any apprehension of bias in the process.

- The Integrity Commissioner is generally given broad powers to examine documents during their investigation.
- The Integrity Commissioner will strive to complete investigations within **90 days** of the date the complaint is accepted.
- The Code contains provisions against obstructions of an investigation, and/or reprisals against participants. A failure to observe these provisions is itself a breach of the Code.

Report to Council

- Upon conclusion of an investigation, the Integrity Commissioner will either:
 - dismiss the complaint with written reasons to the complainant and a copy of their decision to all members of council, including the responding member if a contravention of the bylaw has not been proven on the balance of probabilities; or
 - prepare a report to council if a contravention of the bylaw has been proven on the balance of probabilities.
- Should the Integrity Commissioner determine that there has been a Code breach, they will submit a report to council containing their findings and their recommendation on sanctions.
- The report is forwarded to the City Manager to be placed on the next regular council meeting agenda:

Council Decision

- The City Manager will request the Mayor to include a verbal report from the Integrity Commissioner in the closed meeting portion of the agenda for the next regular council meeting at which consideration of the verbal report can be accommodated.
- Not less than 24 hours nor more than 48 hours prior to the start of the council meeting at which the verbal report is to be considered, the Integrity Commissioner will provide a copy of the report, on a strictly confidential basis, to the member of council about whom the report was received.
- All other members of council will receive the decision on a strictly confidential basis at the time the Integrity Commissioner provides their verbal report to council at the closed meeting.
- Council may accept or vary the Integrity Commissioner's recommendation on sanctions.
- Following the closed meeting the Integrity Commissioner's report will be reviewed and redacted in compliance with FOIP and posted on the City's website along with the total cost of the investigation.

Advice and Recommendations Function of Integrity Commissioner

- Any council member may request the integrity commissioner to give advice and recommendations on any matter respecting obligations of the council member under the Code.
- Advice and recommendations are confidential until released with the consent of the council member

(b) *Practical Considerations of Implementing an Integrity Commissioner.*

Integrity Commissioners are typically appointed for a time-limited term or held on retainer with a set hourly rate. It is common for a competitive request for proposals (RFP) process to be utilized for those held on retainer. A scan of 10 municipalities with Integrity Commissioners found that Toronto, Vaughan, Brampton and Mississauga hire Commissioners directly, with annual costs ranging from \$100,000 to \$517,600. For municipalities that hold Commissioners on retainer, the annual retainers range from \$1,000 to \$25,000 annually, plus hourly rates ranging from \$200 to \$375. In terms of the actual net cost for Integrity Commissioners held on retainer, the available figures indicate a range from \$21,000 to \$185,000 annually.

Integrity Commissioner Cost		
Municipality	Term of Appointment	Cost
Calgary	2-year appointment	\$24,000 annual retainer plus hourly rate of \$200
Edmonton	Up to 4-year appointment	\$24,000 annual retainer plus hourly rate of \$200 - \$185,000 annual budget
Red Deer	2-year appointment	Fee for service basis only (no monthly or annual retainer fee); - Based on an hourly rate charge; - \$105,000 annual budget.
Wood Buffalo	2-year appointment	\$2,500 per month retainer plus hourly rate of \$240 - \$30,000 annual budget
Saskatoon	3-year appointment	\$2,500 to \$5,000 annual retainer plus hourly rate of \$375
Winnipeg	2-year appointment	\$25,000 annual retainer plus hourly rate of \$200 - \$150,000 annual budget
Toronto	5-year appointment	\$517,600 office budget – 3 full time staff
Ottawa	2-year appointment	\$25,000 annual retainer and a per diem of \$200 per hour to a daily maximum of \$1,000 - \$115,000 reported annual expenditure
Windsor	2-year appointment	\$12,000 annual retainer plus hourly rate of \$300 - \$21,000 reported annual expenditures
Brampton	1 year appointment	\$150,000

Several cost-saving options for retaining an Integrity Commissioner were noted during the scan. The reported experiences from municipalities that have voluntarily retained Integrity Commissioners suggests that costs may be reduced by narrowing or tailoring the scope of the Integrity Commissioner’s mandate in the RFP, such as reducing the educational and advisory roles.

Furthermore, the concept of a shared municipal Integrity Commissioner was recently examined by the Nova Scotia Federation of Municipalities (NSFM) in 2020. The model proposed was based on existing public accountability offices within the Province of Nova Scotia, such as the Nova Scotia Conflict of Interest Commissioner. NSFM eventually dismissed the concept due to excessive cost

estimates for municipal units. Furthermore, if a fee for service model were adopted, such as the model in Red Deer, there would be no advantage to sharing this service with another municipality.

(c) 90-day Timeline to Complete an Investigation

A jurisdictional scan of Alberta municipalities shows that the most common time period allowed for an investigator or Integrity Commissioner to complete an investigation is 90 days. Lethbridge, Red Deer, Calgary and Edmonton have adopted this standard.

INTERNAL AND EXTERNAL ENGAGEMENT CONSIDERATIONS:

N/A

POTENTIAL RISKS / IMPACTS:

Financial:

Funding Request:	No	
Budgeted Item:	No	
Funding Explanation:	N/A	
Budget Amendment Form?	No	

As recently approved by the City of Red Deer, staff recommends that the Integrity Commissioner be compensated on a fee for service model with no monthly or annual retainer. The advantage to this approach is that the City would only pay for actual services received.

As this would be a new role, it is difficult to estimate the exact costs required. Drawing on the most recent experience by the City of Red Deer, we estimate that costs may be in the range of \$75,000 - \$100,000 per year.

Funding for this initiative could be brought forward for Council consideration as part of the 2025-2026 budget deliberations.

Health, Safety and Environmental:

N/A

Legal / Legislative / Policy:

Approval of this Report will result in the City Solicitor bringing Bylaw No. 4805 with amendments to Council for second and third readings. Staff proposes that the new Code bylaw come into force on March 1, 2025.

PUBLIC PARTICIPATION REQUIRED FOR IMPLEMENTATION:

Proposed Bylaw No. 4805 allows members of the public to bring complaints if they reasonably believe a Code violation has occurred.

INFORM <input checked="" type="checkbox"/>	CONSULT <input type="checkbox"/>	INVOLVE <input type="checkbox"/>	COLLABORATE <input type="checkbox"/>	EMPOWER <input checked="" type="checkbox"/>
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ALTERNATIVE OPTIONS / PROS AND CONS:

Option #1: Leave Bylaw No. 4805 'as is'. This is not recommended because the clear direction in which many municipalities across Canada, including in Alberta, are going is the Integrity Commissioner model. It is seen as the way to maintain public perception of fairness, non-bias and impartiality in the system.

IMPLEMENTATION PLAN:

If Council approves the recommendation in this report, administration will prepare amendments to the proposed council Code bylaw and bring it back to council in September or October 2024 for council's consideration of second and third readings.

REVIEWED BY & DATE:	Ben Bullock City Solicitor	2024-05-24
APPROVED BY & DATE:	Ann Mitchell City Manager	2024-05-24
ATTACHMENTS:	1: Code of Conduct Jurisdictional Scan – Enforcement Procedures	

ATTACHMENT 1

Code of Conduct Jurisdictional Scan – Enforcement Procedures

	Calgary	Edmonton	Red Deer	RM of Wood Buffalo	Saskatoon	Winnipeg	Toronto	Ottawa	Brampton	Windsor	Montreal	Charlottetown
Procedure Required by Statute	Yes				Yes	No	Yes				Yes	Yes
Legislated Model	Council's Discretion				Council's Discretion	Council's Discretion	Integrity Commissioner Model				Administrative Tribunal Model	Appointed Investigator Model
Limitation Period	90 days	60 days	90 days	60 days	None	60 days	6 weeks for conflict complaints	None	6 months	6 months	3 years	3 months
Initial Screening	Integrity Commissioner	Integrity Commissioner	Integrity Commissioner	Integrity Commissioner	Integrity Commissioner or Provincial Ombudsman	Integrity Commissioner	Integrity Commissioner	Integrity Commissioner	Integrity Commissioner	Integrity Commissioner	Commission municipale du Québec (Provincial Body)	Mayor or CAO
Investigating Body	Integrity Commissioner	Integrity Commissioner	Integrity Commissioner	Integrity Commissioner	Integrity Commissioner or Provincial Ombudsman	Integrity Commissioner	Integrity Commissioner	Integrity Commissioner	Integrity Commissioner	Integrity Commissioner	Commission municipale du Québec	Municipally Appointed Investigator
Confidential Investigation	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Confidential Reporting	Report released to the public after it is considered by Council In Camera	Report released to the public after it is considered by Council In Camera	Report released to the public after it is considered by Council In Camera	Report released to the public after it is considered by Council In Camera	Report released to the public when it is discussed by Council in public session	Report released to the public when it is discussed by Council in public session	Report released to the public when it is discussed by Council in public session	Report released to the public when it is discussed by Council in public session	Report released to the public when it is discussed by Council in public session	Report released to the public when it is discussed by Council in public session	Public Hearing Commission municipale du Québec open to the public	Reports confidential – release discretionary
Final Decision	Council	Council	Council	Council	Council	Council	Council	Council	Council	Council	Commission municipale du Québec	Council or Mayor